

Notes for Guidance - Taxes Consolidation Act 1997

Finance Act 2024 edition

Part 43 Partnerships and European Economic Interest Groupings (EEIG)

December 2024



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PART 43

PARTNERSHIPS AND EUROPEAN ECONOMIC INTEREST GROUPINGS (EEIG)

Overview

This Part sets out the tax treatment to be applied to income derived from partnerships and European Economic Interest Groupings (EEIGs). The broad effect of the Part is that, in the case of a trade or profession carried on by two or more persons in partnership, each partner's share of the profits or losses are to be treated for tax purposes as if they were profits or losses of a separate business carried on solely by that partner. The notional separate business of a given partner is to be regarded as having been commenced when he/she became a partner and, if he/she ceases to be a partner, as permanently discontinued when he/she so ceases. This procedure also applies in the case of an European Economic Interest Grouping (EEIG) formed in accordance with Council Regulation (EEC) No. 2137/85 of 25 July, 1985 (OJ L 119 31.10.1985 p.1) that is, the profits or losses resulting from its activities are taxable only in the hands of its members.

1007 Interpretation (Part 43)

Definitions

The definitions of “annual payment”, “balancing charge”, “basis period”, and (1) “partnership trade” are self-explanatory.

The definition of “precedent partner” is framed to secure that, in relation to a case in which all the partners are non-resident, any reference to the precedent partner is to be construed as a reference to the resident agent, manager or factor of the firm.

The definition of “relevant period” is of fundamental importance and broadly means a continuous period, the whole or a part of which is subsequent to 5 April 1965, during which a trade is carried on by two or more persons in partnership and during which a complete change of proprietorship did not occur at any one time.

A relevant period in relation to a given partnership trade begins —

- where the trade is in fact set up or commenced by two or more persons in partnership, at the time when the trade is commenced;
- where the trade having previously been carried on by a sole trader becomes carried on by a partnership (including a partnership of which the former sole trader is a member), at the time of the succession;
- where the trade having previously been carried on by a partnership becomes carried on by another partnership none of whose members was a member of the previous partnership, at the time of the succession.

A relevant period in relation to a partnership trade ends on the happening of whichever of the following events first occurs —

- the trade is in fact discontinued;
- the partnership is succeeded by a sole trader (including a sole trader who had been a member of the partnership);
- the partnership is succeeded by another partnership and no member of the old partnership becomes a member of the new one.

If, before 6 April 1965 (but within the relevant period), a partial change of proprietorship occurred in consequence of which the trade was treated as having been set up or commenced at the time of the change under the rules then in force (that is,

Rule 11(2) of the Rules applicable to Cases I and II of Schedule D, Income Tax Act, 1918), the relevant period is to be taken as having begun at the time of the change or at the time of the last such change, where there was more than one change.

Construction

References in the Part to a given partnership are to include, where appropriate, (2) references to any partnership by which the trade concerned is carried on during a relevant period and “partner” is to be construed correspondingly. For any relevant period “the partnership” is, in effect, regarded as an entity having a continuing existence despite any changes in its constitution.

The provisions of the Part are to apply to professions as they apply to trades. (3)

1008 Separate assessment of partners

Summary

This section provides that, in the case of a trade (or profession) carried on by a partnership, profits arising to a partner are charged, and losses sustained by a partner in the trade are relieved, as if they were, respectively, profits and losses of a separate trade carried on by him/her on his/her own account.

The amount of any profits or losses arising to a partner is determined by apportioning, in full, the tax-adjusted profits or losses of the partnership trade in accordance with the apportionment rules in the section.

Charges arising in an accounting period are apportioned to each partner by reference to the amount the partner was liable to bear.

Details

Several trade of partners

The profits arising to any partner in a relevant period from a partnership trade are to be charged, and losses sustained by the partner in the trade are to be relieved, as if they were respectively profits and losses of a separate trade carried on by him/her on his/her own account. The notional separate trade of any partner (referred to as “a several trade”) is to be regarded as having been commenced at the beginning of the relevant period or at such later time as the partner became engaged in carrying on the partnership trade. The commencement provisions apply accordingly. The cessation provisions are to operate, in relation to the several trade of a partner, on the footing that the ending of the relevant period, or the partner’s ceasing to be engaged in carrying on the partnership trade (whichever occurs first), constitutes permanent discontinuance. Annual payments made by the partnership are apportioned as appropriate among the partners. (1)

Apportionment of tax-adjusted profits and losses

The amount of the profits (or loss) which is to be taken as arising to (or suffered by) each partner in a year or period is the part of the full tax-adjusted profits (or loss) of the partnership for that year or period which would arise if those profits (or that loss) were apportioned in accordance with the terms of the partnership agreement relating to the sharing of profits and losses. (2)(a)(i)

Where the aggregate of the amounts of the profits taken as arising to each partner in a year or period is less than the full tax-adjusted profits or gains of the partnership for that year or period, then the balance is to be apportioned between the partners for tax purposes either: (2)(a)(ii)

- in the ratio which is expressed between the partners in relation to the apportionment of that amount, or
- where no such ratio is expressed, in the same ratio as the ratio which applies between the amounts of profits or gains already apportioned between the partners. In circumstances where no partner had profits or gains taken as arising to him/her, then the apportionment of any tax-adjusted profits or gains that were not apportioned are to be made in equal shares.

Sections 65 and 107 are to apply as if a partner’s share of profits or losses brought out by any accounts made up for the partnership trade were profits or losses brought out by accounts made up for his/her several trade. (2)(b)

The inspector is to determine the amount of the partnership profits for any period and he/she is to do so as if the partnership trade had been set up at the beginning, and permanently discontinued at the end, of the relevant period and had at all times during that period been carried on by one and the same person. Where a relevant period began before 6 April 1965 and the trade was not treated, for tax purposes, as having been set up or commenced at that time, the latest date before 6 April 1965 on which the trade was treated as having been commenced is, for the purposes only of computing partnership profits, to be taken as the beginning of the relevant period. In such a case, where a person carried on the trade on his/her own account at some stage during the extended relevant period, his/her profits as a sole trader are treated as being the profits of a partnership trade of which he/she was entitled to the full profits. (3)

The section is not to cause income which, apart from the section, is not earned income to become earned income (for example, the income of a sleeping partner which by virtue of **section 3(2)(a)(iii)** is not earned income but is deemed by the section to be income from a trade carried on solely by him/her). (5)

1008A Medical practitioners operating in partnership

Summary

This section provides that, where individual medical practitioners enter into contracts with the Health Service Executive (HSE) to provide certain medical services and provide those services in the conduct of a partnership profession with other individual medical practitioners, the income from those services can be treated as income of the partnership for tax purposes, where a joint election is made. It also allows Professional Services Withholding Tax (PSWT) to be deducted from the relevant payment under the tax number of the medical partnership where such an election is made.

Details

Definitions

“enactment” means a statute, or an instrument made under a power conferred by statute. (1)

“medical partnership” means a partnership where all of the partners are individuals and are medical practitioners, and the partnership is governed by a partnership agreement. This ensures that the provision only applies to partners that are individuals and does not apply to corporates or employees.

“medical practitioner” has the same meaning as in the Medical Practitioners Act 2007. It is a person who holds a basic medical qualification, which is one approved by the Medical Council. It also includes the European Union and third country equivalent qualifications.

“partnership agreement” means any valid written agreement governing the partnership which is subject to the laws of the State.

“relevant income” means all amounts, in respect of relevant medical services, paid to, or for the benefit of, a relevant medical services provider, by the HSE.

“relevant medical services” means services provided by a medical practitioner pursuant to the following Acts and regulations -

- regulations made under sections 5 and 29 of the Health Act 1947, i.e. the National Childhood Immunisation Programme; (a)
- section 58 of the Health Act 1970, i.e. the GMS Scheme; (b)
- sections 62 and 63 of the Health Act 1970, i.e. the Maternity and Infant Care Scheme; (c)
- section 62A of the Health Act 1970, i.e. Termination of Pregnancy Services; (d)
- section 67E of the Health Act 1970, i.e. the Free Contraception Contract Scheme; (e)
- section 70 of the Health Act 1970, i.e. the National Cervical Screening Programme; (f)
- orders made under section 75A and regulations made under section 75B, of the Health Act 1970 and Regulation (EC) No. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems and the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, done at Brussels and London on 30 December 2020, i.e. reciprocal or other arrangements made for medical services to EU and UK nationals temporarily in the State. (g, h, n, o)
- the Health (Amendment) Act 1996, i.e. provision of health services to relevant participants who have contracted Hepatitis C; (i)
- the Mental Health Act 2001, i.e. services relating to Involuntary Admissions; (j)
- the Redress for Women in Certain Institutions Act 2015, i.e. provision of health services to eligible participants; (k)
- the Misuse of Drugs Acts 1977 to 2017, i.e. the Opioid Replacement Scheme; (l)
- the Mother and Baby Institutions Payment Scheme Act 2023, i.e. provision of health services to eligible participants; (m)
- such other provisions of any other enactment as the Minister for Finance may by order prescribe. (p)

“relevant medical services provider” means a medical practitioner with whom the HSE has entered into a contract to provide relevant medical services.

“relevant payment” has the same meaning as *section 520(1)* – it means a payment for professional services made by an accountable person, for the purposes of PSWT.

Ministerial order

Subsection (2) provides that the Minister for Finance may, by order, make provision for inclusion of additional medical services under this section.

The Minister for Finance, following consultation with the Minister for Health, may by order, make provision for additional medical services, provided by medical practitioners, in the definition of “relevant medical services” under this section. (2)(a)

Every order, referred to in **subsection (2)(a)**, made by the Minister for Finance must be laid before Dáil Éireann after it is made. Where a resolution annulling the order is passed by Dáil Éireann, within 21 days of its next sitting, the order will be annulled, but without prejudice to the validity of anything previously done thereunder. (2)(b)

This section applies to a medical partnership as defined in **subsection (1)** where one or more of the partners in the medical partnership are relevant medical services providers. (3)

The relevant medical services are ordinarily provided by medical practitioners who are partners in or are employed by the medical partnership.

Joint election

A medical partnership and a partner of that medical partnership, who is also a relevant medical services provider, may jointly elect that the proportion of the relevant medical service providers relevant income, that relates to services provided by employees or partners of the medical partnership, be treated as income of the medical partnership. (4)(a)

An election under *paragraph (a)* shall be made in the form and manner specified by the Revenue Commissioners. (4)(b)

Where an election is made under *subsection (4)*, the following will apply; (5)

Treatment of expenses

Any expenses laid out or expended for the purposes of earning the relevant income, which is treated as that of the medical partnership, shall be treated as expenses incurred by the medical partnership in the course of its trade. (5)(a)

Relevant payments for PSWT and notification to the HSE

Where a joint election is made the medical partnership is deemed as receiving the payment for professional services provided in the conduct of the medical partnership for the purposes of *section 529A* which is the section that applies to partnerships for the purposes of PSWT. Therefore the relevant payment is deemed to have been made to each partner in the proportion in which profits or gains of the partnership profession for the year of assessment involved are to be apportioned between the partners. The PSWT shall be apportioned solely between the partners and in the same proportion. (5)(b)

The relevant medical services provider, and not the precedent partner of the medical partnership, shall furnish the tax number of the medical partnership concerned to the HSE (the accountable person). In addition, the medical partnership is the specified person for the purposes of operating PSWT on relevant income. (5)(c)

Tax returns

The precedent partner of the medical partnership shall include details of the relevant income, to which the election under *section 1008A* applies, in the partnership's income tax return Form 1 (Firms). (5)(d)

The relevant medical services provider is to confirm in his or her income tax return (Form 11), that an election has been made under *section 1008A(4)* for the relevant year of assessment and provide the name of the medical partnership to which the election relates. (5)(e)

1009 Partnerships involving companies

Summary

This section provides that a company's profit from a trade carried on in partnership with others is regarded as arising from a separate trade (the "several trade") and is taxed accordingly. The section ensures that a company's share for an accounting period of the profits of a trade which it carries on in partnership with others is charged to corporation tax for that accounting period.

Details

The word "profits" is not to be taken as including chargeable gains. *Section 30* contains separate provision for the charge to capital gains tax in partnership cases. (1)

The provisions of *subsections (1), (2)(a) and (3) of section 1008* are to apply for corporation tax purposes as they apply for income tax purposes. This application imports the concept of a “several trade” into corporation tax and makes provision for the treatment of a company’s share of the charges on income paid by a partnership and the ascertainment of a company’s share of the partnership profit or loss. (2)

Where the period for which the accounts of a partnership have been made up does not coincide with a partner company’s accounting period for corporation tax purposes any necessary apportionments are to be made of the partner company’s share of the partnership profits or losses in order to arrive at its share of these profits or losses for the company’s corporation tax accounting period. (3)

Where an appropriate share of a joint allowance or joint charge (under *section 1010*, this means a company’s share of the capital allowance or charges of the partnership) would be made for a year of assessment for income tax purposes if the company continued to be liable to that tax, the “relevant amount” is to be treated as an expense or receipt of the company’s share of the partnership trade for any part of its corporation tax accounting period which falls within that year of assessment. A joint allowance for a year of assessment is not to include any part of an allowance brought forward from a previous year of assessment. The “relevant amount” means the whole amount of the appropriate share of the joint allowance or the whole amount of the appropriate share of the joint charge, where the accounting period and the year of assessment coincide and a proportion of such allowance or charge where the accounting period does not coincide with the year of assessment. (4)

Any apportionments necessary for the purposes of the section are to be made on a time basis. (5)

1010 Capital allowances and balancing charges in partnership cases

Summary

This section deals with capital allowances and balancing charges to be made in charging the profits of the several trade of a partner. Broadly, it provides that, as respects a given asset, there is first to be determined the amount of the allowance or charge which, if this part of the Act had not been enacted, would have fallen to be made to or on the partnership for the year of assessment concerned and that the allowance or charge so computed is then to be apportioned between the partners.

Details

Subject to the provisions of the section, the general law as regards capital allowances and balancing charges to be made in charging the profits or gains of a trade (as distinct from allowances to be given by discharge or repayment of tax, or charges to be made by way of assessment under Case IV) is to have effect in relation to the several trade of a partner. (1)

In the case of allowances, a partner is entitled for a year of assessment to his/her “appropriate share” of the allowance (the “joint allowance”) in respect of any asset which would have been made for that year in respect of that asset in charging the profits of the partnership trade if that trade had been — (2)

- commenced at the beginning of the relevant period,
- carried on, at all times, by the persons by whom it was carried on in the year of assessment concerned, and
- where the relevant period has ended, permanently discontinued at the end of the relevant period.

This treatment is based on the suppositions that the persons carrying on the trade in the year of assessment are assessable jointly and that all things done in, or in relation to, the carrying on of the trade to or by the persons by whom it was from time to time carried on had been done to or by the persons carrying it on in the year of assessment.

Similar procedures apply to balancing charges as apply to allowances. (3)

Where, at the end of a relevant period in relation to a partnership trade, a person (or another partnership) succeeds to the trade and an asset which was in use for the purposes of the trade up to the date of the succession passes, without being sold, to the successor and continues to be used by him/her for the purposes of the trade, the asset is to be treated as having been sold for its market value and balancing allowances or balancing charges are to be made accordingly. (4)

Where, in the case of a relevant period lying partly before 6 April 1965, the trade was not treated for tax purposes as having been commenced at the beginning of the period, the period is to be extended backwards to the next earlier date on which the trade was treated as having been commenced. (5)

The total amount of joint allowances and the total amount of joint charges for any year of assessment are, subject to the appeal provisions in *section 1012*, to be determined by the inspector. The inspector may amend his/her determination where appropriate. (6)

The total amount of joint allowances and the total amount of joint charges are to be apportioned in the same way as a like amount of profits arising in the “trading period” would be apportioned under the terms of the partnership (profits, for this purpose, being taken to be profits remaining after all partners’ salaries, interest on capital, etc had been provided for). The trading period is normally the year of assessment for which the joint allowance or joint charge is computed but, where the relevant period ends in the year of assessment, the part of that year up to the end of the relevant period is the trading period. The Revenue Commissioners may adopt a different basis of apportionment where, on representations having been made to them through the inspector, they are satisfied that hardship would otherwise be caused. All the partners concerned (including the personal representatives of a deceased partner) must join in the representations. (7)

Where, for a year of assessment, the assessment on a partner is insufficient to absorb his/her share of the joint allowances, unrelieved allowances are to be carried forward to the following year and, for the purposes of assessment, apportioned in the same way as a joint allowance for that following year. Similar treatment applies to any allowances to the partnership, for 1964–65 or earlier years, which have not been effectively relieved and which, if the previous law continued to operate, would have been available for set off against the assessment on the partnership for 1965–66 or later years. (8)

A claim by the precedent partner for a joint allowance is necessary and sufficient to enable his/her appropriate share of that allowance to be made to each of the partners. The claim must be included in the return delivered by the precedent partner under *section 880*. (9)

1011 Provision as to charges under *section 757*

This section is concerned with charges under *section 757* in respect of capital gains on the sale of patent rights. Where a charge (referred to as a “joint charge”) under *section 757* would, if the Income Tax Acts had so provided, have fallen to be made in charging the profits of a partnership trade, a charge equal to his/her “appropriate share” of the joint charge is to be made on each of the partners in charging the profits of his/her several trade. A partner’s appropriate share of a joint charge under that section is to be

determined in the same way as his/her appropriate share of a joint (balancing) charge is determined under *section 1010(7)*.

1012 Modification of provisions as to appeals

Summary

This section applies the usual appeal procedure to determinations of partnership profits, joint allowances and joint charges.

Details

When the inspector has made a determination under *section 1008(3)* or *1010(6)*, he/she (1) may give notice of it to the precedent partner.

A partner aggrieved by the determination under section 1008(3) or 1010(6) may appeal the determination by way of notice in writing to the Appeal Commissioners. The appeal must be made within 30 days after the date of the notice of the determination. The appeal is heard and determined by the Appeal Commissioners in the manner provided for in Part 40A of the Taxes Consolidation Act 1997.

If a determination is not appealed against, or if any appeal against it has been settled, it (2) is to be binding on all the partners and no question as to its correctness can be raised by any partner on an appeal against any assessment made on him/ her or on a claim under *section 381*.

Where the inspector's apportionment of partnership profits, joint allowances or joint (3) charges is not accepted by one or more of the partners, all the partners, and not only the one who appeals, have the right to be informed of, and to be present at, the hearing of the matter by the Appeal Commissioners.

1013 Limited partnerships

Summary

This section provides that the right of limited partners (which for the purposes of this section includes non-active partners in partnerships generally) to set off interest paid, losses and capital allowances arising out of a partnership trade, is restricted to the amount of their contribution to the limited partnership trade and then only against the profits of the partnership trade – subject to specific commencement provisions.

While this section is primarily aimed at aggressive tax avoidance schemes, it does adopt a broad-brush approach to the problems in this whole area. For this reason, transitional arrangements apply in relation to particular schemes involving seaside resorts, car parks and other projects qualifying for double rent allowances, the White Fish Fleet, and renewable energy projects.

While this section is expressed to apply to a trade its provisions apply in a like manner to professions by virtue of *section 1007(3)*.

Details

Definitions

“active partner” is a partner who works for the greater part of his/her time on the day- (1) to-day management or conduct of the partnership trade.

“the aggregate amount” —

- in the case of an individual, is the aggregate of amounts given or allowed to him/her at any time under any of the specified provisions (see below) —
 - in respect of a loss sustained by him/her in a trade, or of interest paid by him/her by reason of his/her participation in the trade, in any relevant year of assessment, or
 - as an allowance to be made to him/her for any relevant year of assessment either in taxing a trade or by way of discharge or repayment of tax to which he/she is entitled by reason of his/her participation in the trade, and
- in the case of a company, is the aggregate of amounts given or allowed to the company (called in the section the “partner company”) or to another company at any time under any of the specified provisions —
 - in respect of a loss incurred by the partner company in a trade, or of charges paid by it or another company by reason of its participation in the trade, in any relevant accounting period, or
 - as an allowance to be made to the partner company for any relevant accounting period either in taxing the trade or by way of discharge or repayment of tax to which it is entitled by reason of its participation in the trade.

“limited partner” is —

- a person who is carrying on a trade as a limited partner in a limited partnership registered under the Limited Partnerships Act, 1907, (a)
- a person who is carrying on a trade as a general partner in a partnership, who is not entitled to take part in the management of the trade and who is entitled to have his/her liabilities, or his/her liabilities beyond a certain limit, for debts or obligations, incurred for the purposes of the trade, discharged or reimbursed by some other person, (b)
- a person who carries on a trade jointly with others and who, under the law of any territory outside the State, is not entitled to take part in the management of the trade and is not liable beyond a certain limit for debts or obligations incurred for the purposes of the trade, (c)
- a person who carries on a trade as a general partner but not as an active partner, (d)
- a person who carries on a trade as a partner in a partnership registered under the law of any territory outside the State, otherwise than as an active partner, or (e)
- a person who carries on a trade jointly with others under any agreement, arrangement, scheme or understanding which is governed by the law of any territory outside the State, in circumstances where the person does not work for the greater part of his or her time on the day-to-day management or conduct of the trade. (f)

“relevant accounting period” is an accounting period of a partner company which ends on or after the specified date (22 May 1985) and at any time during which it carried on the trade as a limited partner.

“the relevant time” is —

- in the case of an individual, the end of the relevant year of assessment in which the loss is sustained or the interest is paid, or for which the allowance is to be made (except that where he/she ceased to carry on the trade during that year of assessment it is the time when he/she so ceased), and
- in the case of a partner company, the end of the relevant accounting period in which the loss is incurred or the charges are paid, or for which the allowance is to be made (except that where the partner company ceased to carry on the trade during that accounting period it is the time when it so ceased).

“relevant year of assessment” is a year of assessment which ends after the specified date (22 May 1985) and at any time during which the individual carried on the trade as a limited partner.

“the specified date” is 22 May 1985.

“the specified provisions” are the various provisions in the Tax Acts under which an individual or company may obtain relief in respect of losses, interest, charges and capital expenditure. These are —

- in the case of an individual, *sections 245 to 255, 305 and 381*, and
- in the case of a company, *sections 243, 308(4), 396(2) and 420(1), (2) and (6)*.

Restriction of losses and capital allowances

In the case of an individual who is a limited partner in relation to a trade, relief may be given or allowed to that individual under any of the specified provisions — **(2)(a)**

- in respect of a loss sustained by him/her in the trade or of interest paid by him/her by reason of his/her participation in the trade, in a relevant year of assessment, or **(2)(a)(i)**
- as an allowance to be made to him/her for a relevant year of assessment either in taxing the trade or by way of discharge or repayment of tax to which he/she is entitled by reason of his/her participation in the trade, **(2)(a)(ii)**

only to the extent that the amount to be given or allowed does not exceed the individual’s contribution to the trade at the relevant time. Where the contribution was made before 24 April 1992 relief may be given or allowed against other income. For contributions made on or after that date relief is confined to profits from the partnership trade. **(2)(a)(I) & (II)**

Where the individual is a limited partner in relation to a trade by virtue of ***paragraph (d)*** (a general but not an active partner) of the definition of “limited partner” and the relevant year of assessment is 1997–98 or 1998–99 and the trade consists of the activity of producing, distributing, or the holding of or of an interest in, films or video tapes or the activity of exploring for, or exploiting, oil or gas resources, then, subject to ***subsection (2A)*** (commencement of this restriction), relief is given only against income consisting of profits or gains from that trade and then only to the extent that any relief given is restricted to the amount of his/her contribution to the partnership trade. **(2)(a)(III)(A)**

Where the individual is a limited partner in relation to a trade by virtue of ***paragraph (d)*** of the definition of “limited partner” and the relevant year of assessment is 1999–2000 or any subsequent year then, regardless of the activity which constitutes the trade, but subject to ***subsection (2B)*** (commencement of this restriction), relief is given only against income consisting of profits or gains from the trade and then only to the extent that any relief given is restricted to the amount of his/her contribution to the partnership trade. **(2)(a)(III)(B)**

Where the individual is a limited partner in relation to a trade by virtue of ***paragraph (e) or (f)*** of the definition of “limited partner” and the relevant year of assessment is 2005 or any subsequent year then relief is given only against income consisting of profits or gains from the trade and then only to the extent that any relief given is restricted to the amount of his/her contribution to the partnership trade. **(2)(a)(IV)**

In the case of a partner company which is a limited partner in relation to a trade, relief may be given or allowed to that company under any of the specified provisions — **(2)(b)**

- in respect of a loss sustained by the partner company in the trade, or of charges paid by the partner company or another company by reason of its participation in the trade, in a relevant accounting period, or

- as an allowance to be made to the partner company for a relevant accounting period either in taxing the trade or by way of discharge or repayment of tax to which it is entitled by reason of its participation in the trade,

only to the extent that the amount to be given or allowed, or, as the case may be, the aggregate amount, does not exceed the partner company's contribution to the trade at the relevant time. Where the contribution was made before 24 April 1992 relief may be given or allowed against other income of the company or given or allowed to another company. Where the contribution was made on or after that date relief may be given or allowed only against profits from the partnership trade.

Contributions to a trade

A person's contribution to a trade at any time is the aggregate of — (3)(a)

- the amount of capital which the person has contributed to the trade and has not subsequently, either directly or indirectly, received back from the partnership or from a person connected with the partnership (the amount of capital invested will not, however, be regarded as being reduced by any payments received from the trade in respect of expenditure which the person incurred on behalf of the partnership trade or in providing facilities for the trade), and
- the amount of any profits or gains of the trade to which the person is entitled but which the person has not received in money or money's worth.

A person is regarded as having received back an amount which the person has contributed to the partnership trade if — (3)(b)

- the person received consideration of that amount or value for the sale of the person's interest, or any part of the person's interest, in the partnership,
- the partnership, or any person connected with the partnership, repays that amount of a loan or an advance from the person, or
- the person receives that amount of value for assigning any debt due to the person from the partnership or any person connected with the partnership.

Treatment of general partners as limited partners

Where there is any agreement, arrangement, scheme or understanding in connection with an investment made on or after the 11 April 1994 by a general partner in a partnership trade which provides that either — (4)

- the general partner is obliged to retire from the partnership before being entitled to a refund of the investment, or
- the ability of a creditor of the general partner or of the partnership to recover a debt from the general partner is restricted,

the general partner is regarded as a limited partner and all of the restrictions in the section apply in relation to the investment. The restriction applies to any amount of interest, loss or allowance which would not have arisen in the absence of the making of the investment.

Commencement, etc

The restricting of relief to income from the partnership trade in respect of contributions made on or after 24 April 1992 applies to contributions which would otherwise be disallowed under the section but for a contribution to the trade on or after that date. The amounts would have been disallowed because the person would already have got relief up to the amount invested by him/her in the partnership. In the case of certain limited partnerships carrying on the management and letting of holiday cottages the restriction applies in respect of contributions made on or after 1 September 1992 instead of 24 April 1992. (5)

The effective date as respects the restrictions imposed by this section is 28 February 1998 where an individual is a limited partner by virtue of **paragraph (d)** (a general but not an active partner) of the definition of “limited partner” and the trade consists of the activity of producing, distributing, or the holding of or of an interest in, films or video tapes or the activity of exploring for, or exploiting, oil or gas resources. (2A)

In the case of any other trade carried on by a limited partnership, the effective date as respects the restrictions imposed by this section is 1 March 2000 where an individual is a limited partner by virtue of **paragraph (d)** (a general but not an active partner) of the definition of “limited partner”. This is subject to the transitional measures provided for in the case of certain trades – see below. (2B)

It should be noted that the reference to a “loss” in **paragraph (c)** of **subsections (2A)** and **(2B)** is a reference to a loss sustained in a trade as such and not to a “loss” created, or to the part of a loss which is referable to capital allowances used, under **section 392** for the purposes of making a claim under **section 381**. Accordingly, capital allowances used in such a manner are not affected by the new restrictions provided the expenditure giving rise to such allowances was incurred on or before 29 February 2000.

Transitional measures

The transitional measures provide for the non-application of the restrictions contained in this section in the case of certain individuals who would otherwise be affected. (2C)

Definitions

“excepted expenditure” means — (2C)(a)

- capital expenditure to which the restrictions contained in **section 409A** apply (this provision limits to €31,750 the amount of capital allowances an individual may off-set against other income), and
- certain capital expenditure specifically excluded from the provisions of **section 409A** and from **section 409B**. This expenditure is expenditure on buildings to which the transitional measures contained in **section 409A(5)** apply and expenditure on buildings to which the transitional measures contained in **section 409B(4)** apply (for this purpose expenditure on the buildings referred to in both **paragraph (a)** and **(b)** of **section 409B(4)** is included). Also included is capital expenditure on hotels above a certain standard located in counties Cavan, Donegal, Leitrim, Mayo, Monaghan, Roscommon and Sligo with the exception of such hotels located in designated seaside resorts in those counties.

“specified deduction” is any of the further deductions allowed in respect of rent provided for in the various provisions giving the “double rent allowance” and listed in the definition. The reference is to the further deduction (generally referred to in the provisions concerned as the “second-mentioned deduction”) to be allowed in respect of rent. The reference is not to be read as including the original deduction in respect of rent (generally referred to as the “first-mentioned deduction” in the provisions concerned).

“specified individual” identifies the type of individual to whom the transitional provisions apply. The individuals concerned are individuals who are limited partners only by reference to **paragraph (d)** of the definition of “limited partner”. In other words, only individuals who carry on a trade or profession as a general partner in a partnership other than as an active partner. An active partner is a partner who works for the greater part of the time on the day-to-day management or conduct of the trade or profession carried on by the partnership. The transitional provisions cannot, therefore, apply to any other type of individual or any other person who is a limited partner by virtue of any other provision of the definition of “limited partner”.

Trades eligible for transitional relief

A specified individual whose partnership trade consists **wholly** of the leasing of plant or machinery to a company which is a qualifying company within the meaning of **section 486B**. (2C)(c)

The company must be incorporated in the State, be resident in the State without being resident elsewhere and must exist solely for the purposes of undertaking a renewable energy project for which the Minister for Public Enterprise has given the appropriate certificate, which certificate has not been revoked. To qualify under this provision the expenditure on the plant and machinery must have been incurred under an obligation entered into between the lessor and the lessee before 1 March 2001.

A specified individual to whom an accelerated capital allowance under **section 284(3A)** is made in charging the profits or gains of that individual's several trade where he/she is a specified individual in relation to that partnership. (2C)(d)

The allowance under **section 284(3A)** is an allowance in respect of expenditure on machinery or plant consisting of a sea fishing boat registered in the Register of Fishing Boats where the expenditure is incurred in the period 4 September 1998 to 3 September 2001 provided the expenditure is certified by Bord Iascaigh Mhara as incurred for the purposes of fleet renewal in the polyvalent and beam trawl segments of the fishing fleet. The transitional measures for this class of individual, only applies to such an individual for interest incurred on a loan taken out before 4 September 2000; capital allowances for expenditure incurred before that date; and losses incurred in the individual's trade up to the year of assessment 2002. However, losses for later years are not to be subject to the restrictions to the extent that the loss arises from the taking into account of capital allowances made under **section 284(3A)**.

It is to be noted that the transitional measures also applies to individual's who are partners in a trade of leasing such fishing boats. It is by reference to the cut-off date (that is, 3 September 2000) for the availability of these capital allowances for set-off against other income in the case of an individual lessor as set out in **section 403(5A)** that the transitional measures are ended. This gives rise to a difference between the ending of the transitional measure and the ending of the accelerated allowances generally.

A specified individual where a double rent deduction is allowed to the partnership trade in respect of a premises occupied by the partnership for the purposes of the partnership trade. (2C)(e)

This is, however, subject to a number of conditions. These conditions are that —

- the individual joined the partnership before 29 February 2000,
- the individual made a contribution to the partnership trade before that date, and
- the qualifying lease for which the double rent deduction is allowed was granted to or acquired by the partnership before that date.

Where a double rent deduction (for a premises in an area other than a seaside resort area) is not allowed to a partnership and this is reflected in arriving at the profits or gains of the individual's several trade for any year of assessment, the transitional measures will no longer apply to that individual in respect of that trade for interest paid in that year of assessment; allowances to be made for that year; and losses sustained in the trade in that year and subsequent years. (2C)(e)(I)

However, where a double rent deduction is allowed to a partnership for a premises occupied in a seaside resort area, the transitional measures will cease to apply to an individual who is a specified individual in relation to that partnership for interest paid (II) (2C)(e)

by that individual after 1 January 2005; allowances made for the year of assessment 2005 and subsequent years; and losses sustained in the year 2005 and subsequent years.

Transitional relief

The restrictions provided for by this section do not apply in respect of a specified individual where that individual is engaged in particular trades as set out above. The restrictions are only lifted to the extent that interest paid by the individual, capital allowances made to the individual and losses allowed to the individual are referable to or arise from that individual’s participation in one or other of these partnership trades. (2C)(b)(i)

The restrictions in respect of a specified individual do not apply to the extent that interest paid by the individual, capital allowances made to the individual and losses allowed to the individual are referable to excepted expenditure. (2C)(b)(ii)

1014 Tax treatment of profits, losses and capital gains arising from activities of a European Economic Interest Grouping (EEIG)

Summary

This section provides for the tax treatment of profits or losses resulting from the activities of European Economic Interest Groupings (EEIGs). An EEIG is a form of business entity established under EU Council Regulation 2137/85 of 25 July 1985 and can be set up by residents (individuals, companies, trusts, etc) or two or more EU Member States. The Regulation requires that profits or losses resulting from the activities of a grouping are to be taxable only in the hands of its members (that is, the EEIG itself is not to be charged to tax). To conform with the EU regulation, the section applies the partnership provisions of this Part to the activities of EEIGs so that profits, losses and capital gains of an EEIG are attributed to its members who are then to be chargeable or allowed relief, as the case may be, on their respective share.

Details

An EEIG (referred to in the section as a “grouping”) is defined by reference to the European and Irish Regulations governing EEIGs, that is — (1)

- Council Regulation (EEC) No. 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG), and
- The European Communities (European Economic Interest Groupings) Regulations, 1989 (S.I. No 191 of 1989).

An EEIG is not to be charged to income tax, corporation tax or capital gains tax in respect of profits, gains or chargeable gains arising to it, nor entitled to loss relief, but, instead, the profits, gains or chargeable gains arising to, or losses resulting from, the activities of the EEIG are to be charged or relieved in the hands of the members of the EEIG in accordance with the provisions of the section. (2)

The provisions of the Part, other than *sections 1009, 1010(8) and 1013*, apply with specified modifications and any other necessary modifications so as to treat EEIGs on the same basis as partnerships engaged in a trade or profession. (3) & (4)